



Commonwealth of Massachusetts State Ethics Commission

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CONFLICT OF INTEREST OPINION EC-COI-91-8

You are an administrator in a town (Town). Your duties include working directly for the town manager on special projects, serving as acting town manager in his absence, and working on special redevelopment projects in the Town.

As part of the revitalization effort in the business district, you initiated a program of housing rehabilitation in the surrounding neighborhoods. Under that program, through community development grants funded by the federal Department of Housing and Urban Development (HUD) and awarded by the state Executive Office of Communities and Development (EOCD), properties which have code violations are eligible for grants to eliminate those violations. In addition, special grants are given in conjunction with the regular funding for the removal of lead paint from homes and rental units.

The program has two components, addressing both owner-occupied and rental units. Under the owner-occupied program component, owners who meet the income criteria established by Section 8 guidelines of HUD can receive grants to rehabilitate their home. This assistance ranges from outright grants to matching grants dependent upon income. Under the second program component, rental units are targeted for assistance regardless of whether those units are owner or nonowner occupied multi-units. This component provides for matching funds and requires that the occupants of the rental units meet the Section 8 HUD guidelines. In addition, the owner must agree to continue to rent to income-eligible individuals for a specified period of time.

The program is administered by a community development coordinator who works under your supervision. He is responsible for reviewing applications for assistance and determining eligibility. Under his supervision is the housing rehabilitation specialist and the program secretary.

You are the owner of a multi-family unit in which you live. The unit is located in the required target area for eligibility. You have been notified by a representative of the state Department of Public Health that one of your rental units and areas of the exterior of the building contain lead paint. With this notification, you have been informed that you have ten days to contract for the removal of the lead paint. You are interested in applying for a rehabilitation grant for an owner-occupied building under the above-described housing rehabilitation program.

QUESTION:

Does G.L. c. 268A permit you to apply for and accept a rehabilitation grant under the housing rehabilitation program?

ANSWER:

Yes, subject to certain conditions.

DISCUSSION:

As director of administration and development for the Town, you are considered a municipal employee for the purposes of G.L. c. 268A. Four sections of the law are relevant.

1. Section 20

Section 20 of G.L. c. 268A prohibits a municipal employee from having a financial interest, direct or indirect, in a contract made by an agency of the same municipality, unless an exemption applies. The housing rehabilitation grant will constitute a contract for the purposes of G.L. c. 268A, EC-COI-87-40, and your proposed acceptance of the grant will give you a financial interest in a contract made by a Town agency, the office of administration and development. Under G.L. c. 268A, s.20(e), however, the prohibition of s.20 does not apply "to a municipal employee who receives benefits from programs funded by the United States or any other source in connection with the rental, improvement or rehabilitation of his residence to the extent permitted by the funding agency." Because your housing rehabilitation grant would involve your receipt of benefits from a federally funded program in connection with the rehabilitation of your residence, you qualify for an exemption under s.20(e). Compare, EC-COI-83-117 (grant must involve improvement or rehabilitation of residence in order to qualify under s.20(e)).

2. Section 19

Under G.L. c. 268A, s.19, a municipal employee is prohibited from officially participating¹ in any application, contract, decision or other particular matter² in which he has a financial interest. To comply with s.19, you must abstain from any official discussion, review, recommendation, approval or monitoring of your grant application or grant in your capacity as director of administration and development. Your appointing official, the town manager, may assign these official responsibilities to other municipal employees or may assume them himself.³

3. Section 17(c)

Under G.L. c. 268A, s.17(c), a municipal employee may not act as agent for anyone in connection with any particular matter in which the municipality or a municipal agency is either a party or has a direct and substantial interest. The Commission has recognized, however, that an employee who appears before a municipal agency on his own behalf is not acting as the agent for others within the meaning of G.L. c. 268A, s.17. See, Advisory No. 13 (Agency); EC-COI-89-11; 85-55. Accordingly, you may file with a Town agency an application for a housing rehabilitation grant on your own behalf as an owner-applicant.

4. Section 23(b)

Under G.L. c. 268A, s.23(b), a municipal employee may neither

(2) use or attempt to use his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals; nor

(3) act in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. It shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, disclose in a manner which is public in nature, the facts which would otherwise lead to such a conclusion.

These provisions apply both to you and to other Town officials. Under this section, those Town officials who will be reviewing your housing rehabilitation application may not grant to you any unwarranted treatment and must evaluate your application pursuant to the same objective standards by which other similar applications are handled. Those officials should also disclose to the town manager the fact that they are participating in a matter affecting the director of administration and development.

As applied to you, s.23 requires that your official dealings with these town officials be in no way influenced by the outcome of your housing rehabilitation application. For example, your evaluation of employees of the office of administration and development may not be influenced by their handling of your housing rehabilitation grant application.

DATE AUTHORIZED: March 13, 1991

¹ "Participate," participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, s.1(j).

² "Particular matter," any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, s.1(k).

³ Under s.19(b)(1), the town manager also has the option of granting you written permission to participate officially in matters in which you have a financial interest, pursuant to the standards of s.19(b)(1). See, In the Matter of Peter J. Cassidy, 1988 SEC 371.